

Draft Voluntary, Land-Based Wind Energy Guidelines

Questions and Answers

Question: What is the Service announcing today?

Answer: The Service is announcing the availability of draft, voluntary Guidelines for wind turbine projects. These draft Guidelines provide developers and agency staff with a process to make the best possible decisions in selecting sites for wind energy facilities to avoid and minimize the negative effects to fish, wildlife and their habitats resulting from construction, operation and maintenance of land-based, wind energy facilities.

Question: How did the Service create these Guidelines?

Answer: In July 2003, the Service released for a set of voluntary, interim Guidelines for land-based, wind energy projects to assist developers in avoiding, minimizing and/or compensating for effects to fish, wildlife, and their habitats. Following an extended two-year public comment period, the Secretary of the Interior established the Wind Turbine Guidelines Advisory Committee under the auspices of the Federal Advisory Committee Act in March 2007 to provide the recommendations for the final guidelines. The Committee was comprised of a diversity of stakeholders, including federal, tribal, state, private industries and conservation organizations. After two years of deliberations, the Committee submitted their final recommendations to the Secretary on March 4, 2010. The U.S. Fish and Wildlife Service then convened an internal working group representing several Service programs to review the Committee recommendations. The working group used the recommendations as a basis to develop the Service's draft voluntary Wind Energy Guidelines.

Question: Who are these Guidelines intended for?

Answer: The Guidelines are designed to be used for all utility-scale and community-scale land-based, wind energy projects regardless of whether they are proposed for private or public lands. The Guidelines will be used by developers, federal agencies, and state organizations for selecting sites for wind energy projects. They are intended to address the potential negative effects of wind energy development on fish, wildlife, and

their habitats. These Guidelines are **not** designed for off-shore wind energy projects as those projects entail another suite of effects and analyses. The Service is specifically seeking comment on how industry can apply the Guidelines in a cost-effective way, particularly small-scale turbine operators.

Question: How do the Guidelines work?

Answer: The draft Guidelines describe the information needed to identify sites with low risk to wildlife, and assess, mitigate, and monitor the potential adverse effects of wind energy projects on fish, wildlife, and their habitats, using a consistent and predictable approach, while providing flexibility to accommodate the unique circumstances of each project.

Using a tiered approach for assessing potential effects to fish, wildlife, and their habitats, these draft Guidelines outline an iterative decision-making process for collecting information in increasing detail, quantifying the possible risks of proposed wind energy projects to fish, wildlife, and their habitats, and evaluating those risks to select sites and make construction and operation decisions. Subsequent tiers refine and build upon issues identified by efforts undertaken in previous tiers. At each tier, a set of questions is provided to help the developer identify potential negative effects associated with the project and to guide the decision process.

Question: What is the incentive to follow the Guidelines?

Answer: These Guidelines are voluntary. The U.S. Fish and Wildlife Service urges developers to adhere to the Guidelines, once finalized, and to communicate with the Service's staff when planning and operating a facility. The Service will regard such voluntary adherence and communication as evidence of due care with respect to avoiding, minimizing, and mitigating significant negative impacts to species protected under the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act, and will take that into account when exercising its discretion with respect to any potential referral for prosecution related to the death of or injury to any such species. Each developer should maintain internal records sufficient to demonstrate adherence to the guidelines.

Examples of these records could include the following: studies performed in the implementation of the tiered approach; an internal or external review or audit process; an Avian and Bat Protection Plan; or a wildlife management plan.

Question: What if a developer chooses not to follow the Guidelines?

Answer: Developers using the Guidelines, once finalized, demonstrate a good-faith effort to develop and operate projects consistent with the intent of federal laws. Based on this, the Service encourages wide use of the final Guidelines by industry. However, they are not intended nor shall they be construed to limit or preclude the Service from exercising its authority under any law, statute, or regulation, and to take enforcement action against any individual, company, or agency, or to relieve any individual, company, or agency of its obligations to comply with any applicable federal, state, tribal, or local laws, statutes, or regulations.

Question: How do the Service's draft voluntary Guidelines differ from the FAC recommendations?

Answer: There are several differences between the FAC recommendations submitted in March 2010, and these draft voluntary Guidelines developed by the U.S. Fish and Wildlife Service. We have provided a side-by-side comparison chart for the major elements that most stakeholders are interested in, but it is not considered exhaustive. Some of the differences include the following:

- A. Study duration and intensity: The FAC recommendations did not provide any specific timeframe for pre-construction monitoring and assessment. In these draft voluntary Guidelines, the Service recommends a minimum of 3 years duration for assessment and monitoring before construction starts. This is to establish a trend in site use and conditions that incorporates annual and seasonal variation in meteorological conditions, biological factors and other variables.
- B. Implementation: The FAC recommendations included a 2 year phase-in period for project construction. These Guidelines remove the 2 year phase-in period. While the Service acknowledges that it will take time to train agency staff and

stakeholders, the Guidelines allow for developers to apply tiers relevant to the remaining activities for existing/on-going projects. For example, they will not be required to initiate pre-construction tiers if the project is under construction at the time of publication/finalization.

- C. **Developer Decision Points:** In the Guidelines, the Service added “in coordination with the Service” at the developer decision points. This means that the decision to proceed to the next tier is made by the developer in coordination with the Service. The decision is based on whether all questions identified in the tier have been adequately answered and using methods appropriate for the site selected and the risk posed to affected species and their habitats. Answers indicating little or no risk for all questions in a tier may lead the developer to conclude that the tiered approach may end at a particular tier. Developers are encouraged to coordinate with the Service prior to the decision to end the process at that tier.
- D. **Significant Adverse effects:** The FAC Recommendations used the terms “significant adverse effects” throughout the document. In the Guidelines, the Service replaced the term “significant adverse effects” with “adverse effects.” The Committee discussed the term “significant” at great length and included a definition in their Glossary. The Service determined that the use of the term may cause confusion with other terms used during consultation under the Endangered Species Act. This is also consistent with policies and practices used during project review.

Question: Will the Service be concurring with developer decisions?

Answer: The Service does not have the legal authority to provide concurrence to developers as they move through the tiers or when they make their final decision to proceed with the project or not. The Service will provide comments on whether actions proposed by the developer are sufficiently protective of fish and wildlife resources.

Question: When do the Guidelines take effect?

Answer: The draft voluntary Guidelines will not take effect until after the public comment period and final Guidelines are published in the Federal Register. The Service will continue to use the 2003 Guidelines until that time.

Question: What is the next step?

Answer: After the public comment period closes, the Service will review the comments and may make revisions to the Guidelines before finalizing them. Finalizing the Guidelines and publishing them in the Federal Register may take up to one calendar year from the publication of the final Guidelines.

For additional information: visit the Service's website at

<http://www.fws.gov/windenergy/>